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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,834	11/24/2003	Andrew E. Neubauer	KCX-668 (19385)	4749
22827	7590	05/12/2005		
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER GIBSON, KESHIA L	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/721 834

EXAMINER
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ART UNIT	PAPER
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20050425

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/721,834	NEUBAUER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Keshia Gibson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 24 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-21 and 43-60 is/are pending in the application.
- 4a) Of the above claim(s) 43-60 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,7-10,12,13,15,16 and 19-21 is/are rejected.
- 7) Claim(s) 4-6,11,14,17 and 18 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/14/04, 9/27/04, 10/13/04, 11/10/04,</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-21 and 43-60, drawn to a product, classified in class 604, subclass 378.
  - II. Claims 22-42, drawn to a method of manufacture, classified in class 493, subclass 340.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such as 1) conveying a strip of web in a machine direction, 2) creating cuts at two longitudinally opposing locations in each side flap so as to define the edges of foldable portions of the side flaps, 3) folding the foldable portions of the flap, and 4) cutting the strip of web in a cross machine direction to create individual pads.

3. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product will be entered as a**

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matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of In re Ochiai, In re Brouwer and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I. An absorbent having lateral flaps folded onto at least a middle portion.

Species II. An absorbent having lateral flaps folded onto a front, middle, and rear portion.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. During a telephone conversation with Timothy Cassidy on 4/25/05 a provisional election was made without traverse to prosecute the invention of Group I and Species I, claims 1-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 43-60 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Claims 22-42 were cancelled by the applicant.

### ***Specification***

7. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

8. The abstract of the disclosure is objected to because it contains the implied language "is disclosed" and "also disclosed". It is suggested that the phrase(s) "is disclosed. Also disclosed are absorbent structures," located within the first two lines of the abstract, be deleted. Such deletion would result in one continuous sentence void of implied phrases. Correction is required. See MPEP § 608.01(b).

9. The disclosure is objected to because of the following informalities: In the section of "Brief Description of Figures," Fig. 3 is listed as being a plan view of the absorbent article in Fig. 2 in an unfolded state; however, the Fig. 3 does not appear to be a diaper in an unfolded state. Appropriate correction is required.

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10. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

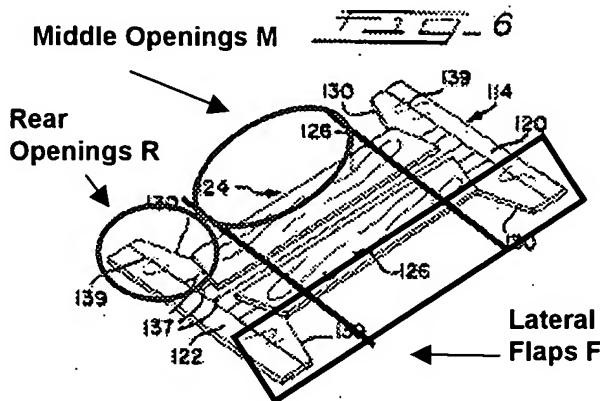
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-3, 7-10, 12-13, 15-16 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Mesek (US 4,670,111).

In regard to Claim 1, Mesek discloses an absorbent article 10, 110 comprising an outer cover 16, 116, a liner 12, 112, and an absorbent structure 14, 114. The absorbent structure further comprises a front portion 22, 122, a middle portion 24, 124, a rear portion 20, 120, a pair of opposing lateral flaps F, a pair of opposing middle openings (marked M in Fig. A below) spaced between the middle portion and the (outer portions of) the lateral flaps F, and a least one rear opening (marked R in Fig. A below) (Figs. 2, 4-6; column 7, lines 5-47). The folded portions 26/126 of lateral flaps F have been folded onto at least the middle region 24, 124 (Figs. 2 and 6). The middle portion 24, 124 has a width narrower than the width of the front portion 22, 122 due to the location of the pair of opposing middle openings M (see Figs. 2, 4-6, Fig. A). The folded portions

26, 126 of the flaps F create a two-layer structure in the middle portion 24, 124 (Figs. 2, 4-6; column 7, lines 27-38).



**Fig. A:** Examiner's mark-up of Merek's Fig. 6.

In regard to Claim 2, Mesek discloses that the middle portion 24, 124 includes a plurality of thicknesses, or layers, to provide increased absorptive capacity to the crotch region (column 7, lines 27-31). As further depicted in Fig. 6, the folded portions 26, 126 result in the absorbent structure 14, 114 being two layers thick. In Fig. 4, the folded portion result in the absorbent structure 14, 114 being three layers thick. From Figs. 2 and 5-6, it can be seen that the front 22, 122 and rear portions of the absorbent structure 14, 114 are only one layer thick. Therefore, Mesek discloses that the folded portions 26/126 create a basis weight (analogous to thickness) in the location of the middle portion 24, 124 that is at least twice the basis weight of the areas of the rear portion 20, 120.

In regard to Claim 3, Mesek discloses that these edges 30, 130 cooperate in the folding of the folded portions 26, 126 to create an overall hourglass shape for the absorbent

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structure 14, 114 (Figs. 1-2 and 5-6). Mesek further discloses that these edges 30, 130 may be curved (column 7, line 41). A curved edge would inherently comprise a concave edge and a convex edge (whether designated as inner or outer). Thus, Mesek discloses that the absorbent structure 14, 114 has an inner concave edge or an outer convex edge that cooperate when the folded portions 26, 126 of the flaps F are folded to provide the structure 14, 114 with an overall hourglass shape.

In regard to Claim 7, the lateral flaps F substantially extend the entire length of the article 10, 110 (Figs. 2 and 5).

In regard to Claim 8, the structure 14, 114 has a rectangular shape when in an unfolded state (Figs. 2 and 5; column 7, lines 35-37).

In regard to Claim 9, cuts 30, 130 define the longitudinally opposing edges of the folded portions 26, 126 of flaps F (Figs. 2 and 4-6; column 7, lines 33-38).

In regard to Claim 10, as discussed for Claim 2, the folded portions 26, 126 result in the absorbent structure 14, 114 being two layers in the middle portion 24, 124 thick and the front 22, 122 portion is only one layer thick; therefore, the middle portion 24, 124 has a basis weight (thickness) at least about twice the basis weight of areas of the front portion 22, 122.

In regard to Claim 12, a basis weight in the middle portion 24, 124 that is at least 25% greater than that of the rear portion 20, 120 would mean that the structure 14, 114 is at least 1.25 times thicker in the middle portion 24, 124 than in the rear portion. As discussed for Claim 2, Fig. 6 shows that the folded portions 26, 126 of flaps F result in the absorbent structure 14, 114 being at least two layers thick in the middle portion 24,

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124; and, the front 22, 122 portion of the absorbent structure 14, 114 is only one layer thick. Since two layers is 2 times thicker than one layer, the basis weight in the middle portion 24, 124 would be at least 25% greater than that of the rear portion 20, 120.

In regard to Claim 13, a basis weight in the middle portion 24,124 that is at least 150% greater than that of the rear portion 20, 120 would mean that the structure 14, 114 is at least 2.5 times thicker in the middle portion 24, 124 than in the rear portion. As discussed for Claim 2, Fig. 4 shows that the folded portions 26, 126 of flaps F result in the absorbent structure 14, 114 being at least three layers thick in the middle portion 24, 124; and, the front 22, 122 portion of the absorbent structure 14, 114 is only one layer thick. Since three layers is 3 times thicker than one layer, the basis weight in the middle portion 24, 124 would be at least 150% greater than that of the rear portion 20, 120.

In regard to Claim 15, Meseck discloses that the absorbent structure 14, 114 is to be used in a diaper (abstract).

In regard to Claim 16, the absorbent structure 14, 114 may comprise pulp fibers and superabsorbent particles (column 8, lines 20-28; column 9, lines 46-54; column 10, lines 18-19).

In regard to Claim 19, the absorbent structure has been debulked and has a density of from about 0.1 g/cc to about 0.45 g/cc (column 8, lines 51-56). "Debulked" has been interpreted to be equivalent lowering or decreasing the density of a material.

In regard to Claim 21, Meseck discloses that the absorbent structure may contain little adhesive (column 8, line 24).

***Allowable Subject Matter***

13. Claims 4-6, 11, 14, and 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Foote (US 3,461,871), Mason (US 3,559,648), Karami (US 3,920,017), Suzuki et al. (US 4,425,127), and Chmielewski (US 6,632,209 B1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out of the office every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson  
Examiner, Art Unit 3761

klg 4/26/05



Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700